

JACKLIN CHOU LEM (CASBN 255293)
ALEXANDRA J. SHEPARD (CASBN 205143)
HOWARD J. PARKER (WASBN 07233)
KAREN J. SHARP (TXSBN 02049500)
ANDREW J. NICHOLSON-MEADE (CASBN 284070)
PARADI JAVANDEL (CASBN 295841)
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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

NEC TOKIN CORP.,

Defendant.

No. CR-15-0426-JD

**REDACTED VERSION OF
DOCUMENT SOUGHT TO BE
SEALED.**

**DECLARATION OF JACKLIN CHOU
LEM IN SUPPORT OF JOINT
SENTENCING MEMORANDUM**

DATE: January 21, 2016 (requested, pending
Court approval)

TIME: 10:30 am

COURT: Hon. James Donato

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Exhibit A

JACKLIN CHOU LEM (CSBN 255293)
 ALEXANDRA J. SHEPARD (CSBN 205143)
 HOWARD J. PARKER (WSBN 07233)
 HENRY J. HAUSER (CSBN 286744)
 ANDREW J. NICHOLSON-MEADE (CSBN 284070)
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Attorneys for the United States

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA) No.
)
v.)
) VIOLATION: 15 U.S.C. § 1
) Price Fixing
NEC TOKIN CORPORATION,)
)
Defendant.) PLEA AGREEMENT
)
)
)

The United States of America and NEC TOKIN Corporation ("defendant"), a corporation organized and existing under the laws of Japan, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;

(c) as a corporation organized and existing under the laws of Japan, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Northern District of California;

(d) to plead not guilty to any criminal charge brought against it;

(e) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;

(f) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(g) to appeal its conviction if it is found guilty; and

(h) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 9 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, will act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty to a one-count Information to be filed in the United States District Court for the Northern District of California. The Information will charge the defendant with participating, from at least as early as April 2002 until in or about December 2013, in a conspiracy to suppress and eliminate competition by fixing

1 prices and rigging bids of certain electrolytic capacitors in the United States and elsewhere, in
2 violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3 3. The defendant will plead guilty to the criminal charge described in Paragraph 2
4 above pursuant to the terms of this Plea Agreement and will make a factual admission of guilt to
5 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

6 **FACTUAL BASIS FOR OFFENSE CHARGED**

7 4. Had this case gone to trial, the United States would have presented evidence
8 sufficient to prove the following facts:

9 (a) For purposes of this Plea Agreement, the "relevant period" is the period
10 beginning at least as early as April 2002 until in or about December 2013. During the
11 relevant period, the defendant was a corporation organized and existing under the laws of
12 Japan. The defendant had a principal place of business in Tokyo, Japan. During the
13 relevant period, the defendant was a manufacturer of tantalum electrolytic capacitors and
14 was engaged in the sale of tantalum electrolytic capacitors in the United States and
15 elsewhere. Electrolytic capacitors are a major sub-category of capacitors, fundamental
16 components of electrical circuits used primarily to store and regulate electrical current.
17 Tantalum capacitors are a type of electrolytic capacitor.

18 (b) During the relevant period, the defendant, through its officers and
19 employees, including high-level personnel of the defendant, participated in a conspiracy
20 among manufacturers of electrolytic capacitors, the primary purpose of which was to fix
21 prices and rig bids of certain electrolytic capacitors sold in the United States and
22 elsewhere. In furtherance of the conspiracy, the defendant, through its officers and
23 employees, at times engaged in discussions and attended meetings with representatives of
24 other manufacturers of electrolytic capacitors. During certain of these discussions and
25 meetings, the conspirators agreed to fix the price and/or rig bids of certain electrolytic
26 capacitors to be sold in the United States and elsewhere.

27 (c) During the relevant period, the defendant and its coconspirators
28 manufactured certain electrolytic capacitors outside the United States and sold them in

the United States or for delivery to the United States. During the relevant period, one or more of the conspirator firms sold certain foreign-manufactured electrolytic capacitors outside the United States for incorporation into products that were sold in or for delivery to the United States. During the relevant period, certain electrolytic capacitors sold by one or more of the conspirator firms traveled in interstate commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Northern District of California. Certain electrolytic capacitors that were the subject of this conspiracy were sold by one or more of the conspirators to customers in this District.

ELEMENTS OF THE OFFENSE

5. The elements of the charged offense are that:

- (a) the conspiracy described in the Information existed at or about the time alleged;
- (b) the defendant knowingly became a member of the conspiracy; and
- (c) the conspiracy described in the Information either (1) substantially affected interstate and U.S. import trade or commerce in electrolytic capacitors or occurred within the flow of interstate or U.S. import trade or commerce in electrolytic capacitors, or (2) had a direct, substantial, and reasonably foreseeable effect on interstate or U.S. import trade or commerce in certain electrolytic capacitor-containing products and that effect, in part, gives rise to the charge in the Information.

POSSIBLE MAXIMUM SENTENCE

6. The defendant understands that the statutory maximum penalty that may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

- (a) \$100 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or
- (c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

7. In addition, the defendant understands that:

- (a) pursuant to §8D1.2(a)(1) of the United States Sentencing Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) or 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years;
- (b) pursuant to U.S.S.G. §8B1.1 or 18 U.S.C. § 3563(b)(2) or 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and
- (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

8. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider, in determining and imposing sentence, the Guidelines Manual in effect on the date of sentencing unless that Manual provides for greater punishment than the Manual in effect on the last date that the offense of conviction was committed, in which case the Court must consider the Guidelines Manual in effect on the last date that the offense of conviction was committed. The parties agree there is no *ex post facto* issue under the November 1, 2014 Guidelines Manual. The Court must also consider the other factors set forth in 18 U.S.C. § 3553(a) in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance-of-the-evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

9. Pursuant to Fed. R. Crim. P. 11(c)(1)(C) and subject to the full, truthful, and continuing cooperation of the defendant and its related entities, as defined in Paragraph 13 of this Plea Agreement, the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of \$13.8 million, payable in installments as set forth

below with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) and no order of restitution (“the recommended sentence”). The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties agree not to seek at the sentencing hearing any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

(a) The United States and the defendant agree to recommend, in the interest of justice pursuant to 18 U.S.C. § 3572(d)(1), that the fine be paid in the following installments: within thirty (30) days of imposition of sentence – \$2.3 million (plus any accrued interest); at the one-year anniversary of the imposition of sentence (“anniversary”) – \$2.3 million (plus any accrued interest); at the two-year anniversary – \$2.3 million (plus any accrued interest); at the three-year anniversary – \$2.3 million (plus any accrued interest); at the four-year anniversary – \$2.3 million (plus any accrued interest); at the five-year anniversary – \$2.3 million (plus any accrued interest); provided, however, that the defendant will have the option at any time before the five-year anniversary of prepaying the remaining balance (plus any accrued interest) then owing on the fine.

(b) The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(c) In light of the availability of civil cases filed against the defendant, including *In Re: Capacitors Antitrust Litigation* (14-CV-03264-JD), filed in the United States District Court, Northern District of California, which potentially provide for a recovery of a multiple of actual damages, the recommended sentence does not include a restitution order for the offense charged in the Information.

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1 (d) Both parties will recommend that no term of probation be imposed, but the
2 defendant understands that the Court's denial of this request will not void this Plea
3 Agreement.

4 (e) The United States and the defendant jointly submit that this Plea
5 Agreement, together with the record that will be created by the United States and the
6 defendant at the plea and sentencing hearings, and the further disclosure described in
7 Paragraph 11, will provide sufficient information concerning the defendant, the crime
8 charged in this case, and the defendant's role in the crime to enable the meaningful
9 exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States
10 and the defendant agree to request jointly that the Court accept the defendant's guilty plea
11 and impose sentence on an expedited schedule as early as the date of arraignment, based
12 upon the record provided by the defendant and the United States, under the provisions of
13 Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. §6A1.1, and Rule 32-1(b) of the Criminal
14 Local Rules. The Court's denial of the request to impose sentence on an expedited
15 schedule will not void this Plea Agreement.

16 10. The United States and the defendant agree that the applicable Guidelines fine
17 range exceeds the fine contained in the recommended sentence set out in Paragraph 9 above.
18 Subject to the full, truthful, and continuing cooperation of the defendant and its related entities,
19 as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the
20 United States agrees that it will make a motion, pursuant to U.S.S.G. §8C4.1, for a downward
21 departure from the Guidelines fine range in this case and will request that the Court impose the
22 fine contained in the recommended sentence set out in Paragraph 9 of this Plea Agreement
23 because of the defendant's and its related entities' substantial assistance in the government's
24 investigation and prosecutions of violations of federal criminal law in the electrolytic capacitors
25 industry.

26 11. Subject to the full, truthful, and continuing cooperation of the defendant and its
27 related entities, as defined in Paragraph 13 of this Plea Agreement, and prior to sentencing in this
28 case, the United States will fully advise the Court and the Probation Office of the fact, manner,

1 and extent of the defendant's and its related entities' cooperation and their commitment to
 2 prospective cooperation with the United States' investigation and prosecutions, all material facts
 3 relating to the defendant's involvement in the charged offense, and all other relevant conduct.

4 12. The United States and the defendant understand that the Court retains complete
 5 discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea
 6 Agreement.

7 (a) If the Court does not accept the recommended sentence, the United States
 8 and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, will
 9 be rendered void.

10 (b) If the Court does not accept the recommended sentence, the defendant will
 11 be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant
 12 withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made
 13 in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or
 14 this Plea Agreement or made in the course of plea discussions with an attorney for the
 15 government will not be admissible against the defendant in any criminal or civil
 16 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant
 17 agrees that, if it withdraws its guilty plea pursuant to this subparagraph of this Plea
 18 Agreement, the statute of limitations period for any offense referred to in Paragraph 15 of
 19 this Plea Agreement will be tolled for the period between the date of signature of this
 20 Plea Agreement and the date the defendant withdrew its guilty plea or for a period of
 21 sixty (60) days after the date of signature of this Plea Agreement, whichever period is
 22 greater. The "date of signature of this Plea Agreement," as used in this Agreement,
 23 means the date that the United States signs this Agreement.

24 **DEFENDANT'S COOPERATION**

25 13. The defendant and its subsidiaries that are engaged in the sale or production of
 26 electrolytic capacitors, including, but not limited to, NEC TOKIN America, Inc. and NEC
 27 TOKIN Taiwan Co., Ltd., (collectively "related entities") will cooperate fully and truthfully with
 28 the United States in the prosecution of this case, the current federal investigation of violations of

1 federal antitrust and related criminal laws involving the manufacture or sale of electrolytic
 2 capacitors, any federal investigation resulting therefrom, and any litigation or other proceedings
 3 arising or resulting from any such investigation to which the United States is a party (collectively
 4 "Federal Proceeding"). Federal Proceeding includes, but is not limited to, an investigation,
 5 prosecution, litigation, or other proceeding regarding obstruction of, the making of a false
 6 statement or declaration in, the commission of perjury or subornation of perjury in, the
 7 commission of contempt in, or conspiracy to commit such offenses in, a Federal Proceeding.
 8 The defendant's subsidiaries for purposes of this Plea Agreement are entities that the defendant
 9 had a greater than 50% ownership interest in as of the date of signature of this Plea Agreement.
 10 The full, truthful, and continuing cooperation of the defendant and its related entities will
 11 include, but not be limited to:

12 (a) producing to the United States all documents, information, and other
 13 materials, wherever located, not protected under the attorney-client privilege or the work-
 14 product doctrine, (and with translations into English), in the possession, custody, or
 15 control of the defendant or any of its related entities, that are requested by the United
 16 States in connection with any Federal Proceeding;

17 (b) using its best efforts to secure the full, truthful, and continuing cooperation
 18 of the current and former directors, officers, and employees of the defendant or any of its
 19 related entities as may be requested by the United States, but excluding the individuals
 20 listed in Paragraph 2 of Attachment A filed under seal. Such efforts will include, but not
 21 be limited to, making these persons available in the United States and at other mutually
 22 agreed-upon locations, at the defendant's expense, for interviews and the provision of
 23 testimony in grand jury, trial, and other judicial proceedings in connection with any
 24 Federal Proceeding. Current directors, officers, and employees are defined for purposes
 25 of this Plea Agreement as individuals who are directors, officers, or employees of the
 26 defendant or any of its related entities as of the date of signature of this Plea Agreement.

27 14. The full, truthful, and continuing cooperation of the current directors, officers,
 28 and employees of the defendant or any of its related entities, and the individuals listed in

1 Paragraph 1 of Attachment A filed under seal, will be subject to the procedures and protections
2 of this paragraph and will include, but not be limited to:

3 (a) producing in the United States and at other mutually agreed-upon
4 locations all documents, including claimed personal documents, and other materials,
5 wherever located, not protected under the attorney-client privilege or the work-product
6 doctrine, (and with translations into English), that are requested by attorneys and agents
7 of the United States in connection with any Federal Proceeding;

8 (b) making himself or herself available for interviews in the United States and
9 at other mutually agreed-upon locations, not at the expense of the United States, upon the
10 request of attorneys and agents of the United States in connection with any Federal
11 Proceeding;

12 (c) responding fully and truthfully to all inquiries of the United States in
13 connection with any Federal Proceeding, without falsely implicating any person or
14 intentionally withholding any information, subject to the penalties of making a false
15 statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §
16 1503, *et seq.*), or conspiracy to commit such offenses;

17 (d) otherwise voluntarily providing the United States with any material or
18 information not requested in (a) – (c) of this paragraph and not protected under the
19 attorney-client privilege or work-product doctrine that he or she may have that is related
20 to any Federal Proceeding;

21 (e) when called upon to do so by the United States in connection with any
22 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the
23 United States fully, truthfully, and under oath, subject to the penalties of perjury (18
24 U.S.C. § 1621), making a false statement or declaration in grand jury or court
25 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of
26 justice (18 U.S.C. § 1503, *et seq.*); and

27 (f) agreeing that, if the agreement not to prosecute him or her in this Plea
28 Agreement is rendered void under Paragraph 16(c), the statute of limitations period for

1 any Relevant Offense, as defined in Paragraph 16(a), will be tolled as to him or her for
 2 the period between the date of signature of this Plea Agreement and six (6) months after
 3 the date that the United States gave notice of its intent to void its obligations to that
 4 person under this Plea Agreement.

5 This Paragraph 14 does not apply to the individuals listed in Paragraph 2 of Attachment A filed
 6 under seal, regardless of their employment status, or to any former director, officer, or employee
 7 of the defendant or its related entities, except those listed in Paragraph 1 of Attachment A filed
 8 under seal.

9 GOVERNMENT'S AGREEMENT

10 15. Subject to the full, truthful, and continuing cooperation of the defendant and its
 11 related entities, as defined in Paragraph 13 of this Plea Agreement, and upon the Court's
 12 acceptance of the guilty plea called for by this Plea Agreement and the imposition of the
 13 recommended sentence, the United States agrees that it will not bring further criminal charges
 14 against the defendant or any of its related entities for any act or offense committed before the
 15 date of signature of this Plea Agreement that was undertaken in furtherance of an antitrust
 16 conspiracy involving the manufacture or sale of electrolytic capacitors. The nonprosecution
 17 terms of this paragraph do not apply to (a) any acts of subornation of perjury (18 U.S.C. § 1622),
 18 making a false statement (18 U.S.C. § 1001), obstruction of justice (18 U.S.C. § 1503, et seq.),
 19 contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses; (b) civil matters of
 20 any kind; (c) any violation of the federal tax or securities laws or conspiracy to commit such
 21 offenses; or (d) any crime of violence.

22 16. The United States agrees to the following:

23 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
 24 Agreement and the imposition of the recommended sentence and subject to the
 25 exceptions noted in Paragraph 16(c), the United States agrees that it will not bring
 26 criminal charges against any current director, officer, or employee of the defendant or its
 27 related entities, or any individual listed in Paragraph 1 of Attachment A filed under seal,
 28 for any act or offense committed before the date of signature of this Plea Agreement and

1 while that person was acting as a director, officer, or employee of the defendant or its
2 related entities that was undertaken in furtherance of an antitrust conspiracy involving the
3 manufacture or sale of electrolytic capacitors ("Relevant Offense"), except that the
4 protections granted in Paragraph 16 do not apply to the individuals listed in Paragraph 2
5 of Attachment A filed under seal, regardless of their employment status, or to any former
6 director, officer, or employee of the defendant or its related entities, except those listed in
7 Paragraph 1 of Attachment A filed under seal;

8 (b) Should the United States determine that any current director, officer, or
9 employee of the defendant or its related entities, or any individual listed in Paragraph 1 of
10 Attachment A filed under seal, may have information relevant to any Federal Proceeding,
11 the United States may request that person's cooperation under the terms of this Plea
12 Agreement by written request delivered to counsel for the individual (with a copy to the
13 undersigned counsel for the defendant) or, if the individual is not known by the United
14 States to be represented, to the undersigned counsel for the defendant;

15 (c) If any person requested to provide cooperation under Paragraph 16(b) fails
16 to comply fully with his or her obligations under Paragraph 14, then the terms of this Plea
17 Agreement as they pertain to that person and the agreement not to prosecute that person
18 granted in this Plea Agreement will be rendered void, and the United States may
19 prosecute such person criminally for any federal crime of which the United States has
20 knowledge, including, but not limited to, any Relevant Offense;

21 (d) Except as provided in Paragraph 16(e), information provided by a person
22 described in Paragraph 16(b) to the United States under the terms of this Plea Agreement
23 pertaining to any Relevant Offense, or any information directly or indirectly derived from
24 that information, may not be used against that person in a criminal case, except in a
25 prosecution for perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false
26 statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §
27 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses;
28

1 (e) If any person who provides information to the United States under this
 2 Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of
 3 this Plea Agreement, the agreement in Paragraph 16(d) not to use that information or any
 4 information directly or indirectly derived from it against that person in a criminal case
 5 will be rendered void;

6 (f) The nonprosecution terms of this Paragraph 16 do not apply to civil
 7 matters of any kind; any violation of the federal tax or securities laws or conspiracy to
 8 commit such offenses; any crime of violence; or perjury or subornation of perjury (18
 9 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623),
 10 obstruction of justice (18 U.S.C. § 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or
 11 conspiracy to commit such offenses; and

12 (g) Documents provided under Paragraphs 13(a) and 14(a) will be deemed
 13 responsive to outstanding grand jury subpoenas issued to the defendant or any of its
 14 related entities.

15 17. The United States agrees that when any person travels to the United States for
 16 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
 17 meetings with counsel in preparation therefor, the United States will take no action, based upon
 18 any Relevant Offense, to subject such person to arrest, detention, or service of process, or to
 19 prevent such person from departing the United States. This paragraph does not apply to an
 20 individual's commission of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a
 21 false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §
 22 1503, *et seq.*), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses.

23 18. The defendant understands that it may be subject to suspension or debarment
 24 action by state or federal agencies other than the United States Department of Justice, Antitrust
 25 Division, based upon the conviction resulting from this Plea Agreement, and that this Plea
 26 Agreement in no way controls what action, if any, other agencies may take. However, the
 27 Antitrust Division agrees that, if requested it will advise the appropriate officials of any
 28 governmental agency considering such action of the fact, manner, and extent of the cooperation

1 of the defendant and its related entities as a matter for that agency to consider before determining
2 what action, if any, to take. The defendant nevertheless affirms that it wants to plead guilty
3 regardless of any suspension or debarment consequences of its plea.

4 **REPRESENTATION BY COUNSEL**

5 19. The defendant has been represented by counsel and is fully satisfied that its
6 attorneys have provided competent legal representation. The defendant has thoroughly reviewed
7 this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge,
8 any possible defenses to the charge, and the nature and range of possible sentences.

9 **VOLUNTARY PLEA**

10 20. The defendant's decision to enter into this Plea Agreement and to tender a plea of
11 guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises,
12 or representations other than the representations contained in this Plea Agreement and
13 Attachment A. The United States has made no promises or representations to the defendant as to
14 whether the Court will accept or reject the recommendations contained within this Plea
15 Agreement.

16 **VIOLATION OF PLEA AGREEMENT**

17 21. The defendant agrees that, should the United States determine in good faith,
18 during the period that any Federal Proceeding is pending, that the defendant or any of its related
19 entities have failed to provide full, truthful, and continuing cooperation, as defined in Paragraph
20 13 of this Plea Agreement, or have otherwise violated any provision of this Plea Agreement, the
21 United States will notify counsel for the defendant in writing by personal or overnight delivery,
22 email, or facsimile transmission and may also notify counsel by telephone of its intention to void
23 any of its obligations under this Plea Agreement (except its obligations under this paragraph),
24 and the defendant and its related entities will be subject to prosecution for any federal crime of
25 which the United States has knowledge, including, but not limited to, the substantive offenses
26 relating to the investigation resulting in this Plea Agreement. The defendant may seek Court
27 review of any determination made by the United States under this paragraph to void any of its
28 obligations under this Plea Agreement. The defendant agrees that, in the event that the United

1 States is released from its obligations under this Plea Agreement and brings criminal charges
2 against the defendant or its related entities for any offense referred to in Paragraph 15 of this Plea
3 Agreement, the statute of limitations period for such offense will be tolled for the period between
4 the date of signature of this Plea Agreement and six (6) months after the date the United States
5 gave notice of its intent to void its obligations under this Plea Agreement.

6 22. The defendant understands and agrees that in any further prosecution of it or its
7 related entities resulting from the release of the United States from its obligations under this Plea
8 Agreement because of the defendant's or any of its related entities' violation of this Plea
9 Agreement, any documents, statements, information, testimony, or evidence provided by it, its
10 related entities, or their current or former directors, officers, or employees, to attorneys or agents
11 of the United States, federal grand juries, or courts, and any leads derived therefrom, may be
12 used against it or its related entities. In addition, the defendant unconditionally waives its right
13 to challenge the use of such evidence in any such further prosecution, notwithstanding the
14 protections of Fed. R. Evid. 410.

15 **ENTIRETY OF AGREEMENT**

16 23. This Plea Agreement and Attachment A constitute the entire agreement between
17 the United States and the defendant concerning the disposition of the criminal charge in this case.
18 This Plea Agreement cannot be modified except in writing, signed by the United States and the
19 defendant.

20 24. The undersigned is authorized to enter this Plea Agreement on behalf of the
21 defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to,
22 and incorporated by reference in, this Plea Agreement.

23 25. The undersigned attorneys for the United States have been authorized by the
24 Attorney General of the United States to enter this Plea Agreement on behalf of the United
25 States.

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26. A facsimile or PDF signature will be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Respectfully submitted,

BY: Fumihiro Katakura
Fumihiro Katakura
Associate Senior Vice President
NEC TOKIN Corporation

Dated: Aug 31, 2015

BY: Jacklin Chou Lem
 JACKLIN CHOU LEM
 ALEXANDRA J. SHEPARD
 HOWARD J. PARKER
 HENRY J. HAUSER
 ANDREW J. NICHOLSON-MEADE
 PARADI JAVANDEL

**Trial Attorneys
U.S. Department of Justice
Antitrust Division**

Dated: 8/28/15

BY: George A. Nicoud III
 GEORGE A. NICLOUD III
 Gibson, Dunn & Crutcher LLP
 Counsel for NEC TOKIN Corporation

Dated: 1 Sept 2015

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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

NEC TOKIN CORPORATION,

Defendant.

) No.

)

)

) VIOLATION: 15 U.S.C. § 1

) Price Fixing

)

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) **ATTACHMENT A TO PLEA
AGREEMENT**

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) **FILED UNDER SEAL**

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